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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,118	03/11/2004	Eric Thomas Connolly	112703-324	8810
29156 7590 12/21/2006 BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/21/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/798,118	Applicant(s) CONNOLLY ET AL.	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/6/04 and 3/7/05</u> . | 6) <input type="checkbox"/> Other: ____. |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15,20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sagel (6,142,366) in view of applicants' admission of the prior art, or vice versa, i.e. applicants' admission of the prior art in view of Sagel, both further in view of Boehm (1,334,346), Haiss (4,290,526), Jeanin (5,437,881), Redmond (3,986,640), Fischer (4,133,431), Hellstrom (3,472,368), Ward (3,521,805) and Bond (2,689,798).

In regard to claim 1, Sagel discloses a packaged food product comprising a food product and a package material formed around the food product, the package material having one or more scored regions allowing ready access of the food product, and wherein the package material includes a metal barrier underlayer that is not scored. Claim 1 differs from Sagel only in the particular food that is packaged. Claim 1 recites a confectionary product. Once it was known to provide the recited packaging to enclose contents, and even edible contents at that, the particular conventional product one packaged in the conventional packaging material is seen to have been an obvious matter of choice and/or an obvious result effective variable. In any case, as evidenced by applicants' admission of the prior art (e.g., page 2, para. 1 of the specification), applicants, of course, are not the first to package confectionary products in packaging material. To modify Sagel and substitute one conventional product for another conventional product would therefore have been obvious. Boehm, Haiss, and Jeanin

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are relied on as further evidence of the conventionality of packaging confectionary products wherein the packaging material has one or more scored regions allowing ready access to the contents. Redmond, Hellstrom, Ward and Bond are relied on as further evidence of the conventionality of employing scored regions to provide easy access to the contents of the packaging material. Fischer is relied on as further evidence of providing access to contents at one or more regions of the packaging material. Similarly, employing applicants' admission of the prior art as the primary reference, applicants' admission of the primary art discloses that it was known to package confectionary products in a roll-type configuration wherein a portion of the packaging material is removed to access the contents. Claim 1 differs from applicants' admission of the prior art in the recitation of scored regions to tear the packaging material and access the contents and the use of a metal barrier layer, which is not scored. As discussed above, Sagel, as further evidenced by the art taken as a whole, discloses it was well established to employ scored regions and employ the recited conventional packaging material. To modify applicants' admission of the prior art and employ the scored regions and the conventional packaging material for its art recognized and applicants' intended function would therefore have been obvious in view of the art taken as a whole. In regard to claims 2 and 3, Sagel teaches that scored regions created by laser cuts or die cuts are conventional. In regard to claim 4, which recites a plurality of pieces of product, packaged in a rolled configuration, the art taken as a whole including Sagel, Boehm and applicants' admission of the prior art disclose it was notoriously conventional to package multiple pieces including employing the roll-type

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configuration. In regard to claim 5, Sagel discloses a laminate with an outer layer that provides structural integrity and an inner layer that includes the unscored metal barrier. Claim 6 recites that the outer layer is scored to a depth effective to allow accessibility of the confectionary product with a single hand. Thus, claim 6 recites an intended use capability of the package. Since Sagel teaches that the outer layer can be cut to a depth completely through the outer layer, then the packaged product of Sagel would inherently be capable of allowing access to the product with a single hand. Note that Sagel also shows accessing the product with a single hand as evidenced by fig. 2. It is also noted in this regard that the phrase access by a single hand is readable on just opening a package with a single hand, and also such phrasing does not rule out supporting the package on a surface or even hitting the package against a surface as is done with dough packages. Hellstrom and Ward are relied on as further evidence of packages, which allow access to the contents by a single hand. Finally, in regard to this issue of access by a single hand, such access is seen to be a function of many variables, not the least of which are the rigidity of the product (so that it doesn't yield too much with the applied force), the tear properties of the packaging material (versus its elastic properties), the size of the container relative to the hand, and the depth of the score. Claim 7, which recites providing a laminate with a plurality of scored regions which includes an unscored metal layer, and then packaging a confectionary product in the laminate material, is the method of making the product of claim 1 and is rejected for the reasons given above. Note, too, that the "thereby" clause does not follow the recited steps. As noted above, the accessibility of the contents by one hand is a function of

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several variables. The "thereby" clause means that what has been previously recited in the claim imparts what comes after the word "thereby". In this case, the claim recitations do not impart the result recited after the word "thereby". Claims 8, 10, and 12 are rejected as was claim 7, for the reasons given above. In regard to claim 9, Sagal discloses laser cutting after lamination. In regard to claims 14 and 15, applicants are obviously not the first to provide printable outer layers and transparent outer layers and inner printable layers. Note, too, these are recited as capabilities (i.e. printable), not actually performed. In any case, Sagal discloses providing a printable outer layer including a plastic outer layer. In regard to claim 11, which recites die cutting occurring prior to laminating, Redmond can be relied on to teach scoring prior to laminating and to therefore modify the combination and substitute one conventional technique for another conventional technique for its art recognized and applicants' intended function would therefore have been obvious.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-19, 21, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Sagal.

Sagal discloses the recited steps of claim 16, and would inherently have the capability of allowing single handed access to a confectionary product if it were

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packaged in the packaging material which is all claim 16 positively recites. Sagal discloses the limitations of claims 17-19,21,23 and 24 as noted above and thus anticipates these claims.

The remainder of the references cited on the PTO892 form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
12/18/06